

STATE OF MICHIGAN  
COURT OF APPEALS

---

CHERYL L. LIPKA,

Plaintiff-Appellee,

v

STANLEY E. LIPKA III,

Defendant-Appellant.

---

UNPUBLISHED

April 13, 2010

No. 290095

Macomb Circuit Court

LC No. 06-0042267-DO

Before: WHITBECK, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right from a post-judgment order resolving various spousal support issues and awarding plaintiff attorney fees and costs of \$10,387.50. We reverse the award of \$5,825 in attorney fees assessed against defendant for opposing the December 5, 2008, motion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The trial court awarded plaintiff attorney fees in connection with two motions: (1) a December 5, 2008, motion to modify an income-withholding order, and (2) a December 18, 2008, order regarding credit card debt. While defendant challenges the award as a whole, his argument relates only to the fees imposed for the December 5 motion. Because defendant does not address the basis for the trial court's ruling as it relates to the December 18 motion, an issue that must necessarily be reached in order to reverse the award of attorney fees in whole, *City of Riverview v Sibley Limestone*, 270 Mich App 627, 638; 716 NW2d 615 (2006); *Derderian v Genesis Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004), we limit our review to the assessment of fees for the December 5 motion.

“Under the ‘American rule, attorney fees are not recoverable as an element of costs or damages unless expressly allowed by statute, court rule, common-law exception, or contract.” *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). Although neither plaintiff nor the trial court ever identified the legal authority for the award, the parties seem to agree that the issue is governed by MCR 3.206. That rule authorizes an award of attorney fees in postjudgment proceedings if the moving party alleges facts to show that “the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.” MCR 3.206(C)(1) and (2)(b). The trial court's ruling on a request for attorney fees under MCR 3.206(C) is reviewed for an abuse of discretion, but the court's findings of fact underlying its ruling are reviewed for clear error. *Reed*, 265 Mich App at 164.

In the December 5 motion, plaintiff asserted that she was owed \$2,000 a month, which comprises \$1,500 in spousal support and \$500 in installment payments on a cash obligation of \$17,065, which defendant had not paid. It was undisputed, however, that both obligations were to be paid through income-withholding orders. It was also undisputed that the trial court had reduced defendant's spousal support obligation to approximately \$555 a month several months earlier, and that amount was being paid by defendant's employer. Further, it appeared that defendant's employer was not paying the other \$500 a month, apparently because it was confused about the number of income-withholding orders and which one(s) it should be following. Therefore, there was no evidence that defendant had refused to comply with any court orders.

While much of plaintiff's argument focused on the fact that defendant had not yet paid the \$17,065 debt and that plaintiff had incurred fees "to fight his motions to reduce the spousal support," the fact remains that the trial court had authorized installment payments on the cash obligation and had reduced defendant's spousal support obligation. Plaintiff did not show that defendant had refused to comply with the court orders that modified defendant's obligations.

Plaintiff's other argument in support of attorney fees concerned defendant's refusal to stipulate to a proposed order granting her the relief ultimately sought in the December 5 motion. However, the trial court never found that defendant violated MCR 2.119(E)(4)(a) or MCR 2.114(D). Further, the parties had a legitimate dispute to be resolved by the court regarding the reduction of defendant's spousal support obligation and the court even ruled against plaintiff on her request for allegedly past due support. Because plaintiff failed to establish any legal basis for the imposition of attorney fees, the trial court abused its discretion in ordering defendant to pay the fees. Therefore, we reverse the award of \$5,825 in attorney fees assessed against defendant for opposing the December 5 motion.

Reversed in part consistent with this opinion.

/s/ William C. Whitbeck

/s/ Patrick M. Meter

/s/ Karen M. Fort Hood